

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9498 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes

3 to 5 No

NALINKUMAR M TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioners

MR. A.J. DESAI, AGP, for respondents 1 to 3

Respondent No. 4 served

MR HJ NANAVATI for Respondent No. 5

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 17/03/97

ORAL JUDGEMENT

Heard learned counsel for the parties. It is noticed that in the circumstances narrated to be hereinafter, the issue is coming up time and again before this court. The petitioners are all appointed as

teachers at the primary school for teaching the primary classes. The qualification prescribed for recruitment of primary teachers under the Recruitment Rules of 1976 is Primary Teaching Certificate examination. The petitioners all hold requisite academic qualification and also hold degree of B.Ed. However, they did not hold specific Primary Teaching Certificate. On the promulgation of Recruitment Rules of 1976 a stand was taken by the State Authorities that those persons holding B.Ed. degree after promulgation of Recruitment Rules could not be considered as a trained primary teachers unless they hold Primary Teaching Certificate. In other words, holder of B.Ed. Degrees after the Recruitment Rules 1976 came into force were not treated as trained Primary Teachers to be regarded as such and entitled to pay scale applicable to trained primary teachers. Those B.Ed. qualified teachers appointed after 1976 were offered pay scale of untrained teachers if their services were not terminated. In the first instance, the controversy arose in SATISHCHANDRA BHAILALBHAI SHAH VS. STATE OF GUJARAT reported in 1984(1) G.L.R. 655. Specific issue which rose before the court was while some of the petitioners who had passed B.Ed. examination before January 1976 were considered as trained teachers while those who have passed B.Ed. Examination after January 1976 were not considered as trained teachers. In the wake of promulgation of Recruitment Rules the Government by issue of notification has exempted teachers who had passed B.Ed. examination prior to January 1976 whereas those who had passed B.Ed. examination after January 1976 were not considered qualified for the higher grade applicable to qualified trained primary teachers. The challenge to this stand of the Government in denying B.Ed. trained teachers to the status of primary teachers was upheld by the court. It was observed by the court:

"It is not disputed that the graduates who have obtained B.Ed. degree are recognised as teachers for teaching Primary Teaching trainees. Therefore, a person who is qualified to teach Primary Teaching Certificate trainees cannot be said to be not qualified for teaching primary school students. If the petitioners are possessing higher qualification, on that ground they cannot be denied lower posts of trained primary teachers."

2. In view of the aforesaid finding the court directed that the petitioners were entitled to higher grade qualified teachers in the respective primary schools. The cut off date in granting exemption was held

to be artificial having no rational nexus with the objective.

3. It may be noticed that when the aforesaid controversy had arisen and decision was rendered, the Circular dated 1.7.1978 Annexure-A which is now sought to be pressed into service by the State was in existence and was placed before the Court. The contention of the State was rejected notwithstanding the Circular.

4. After the said decision again the controversy arose in Special Civil Application No.2903 of 1988, VIDYA VIKAS PRIMARY SCHOOL VS. DISTRICT PRIMARY EDUCATION AND ANOTHER which was decided on 6.2.1996, the petitioners were forced to approach this court because the State Government was denying the grant in respect of 15 teachers in the grade of primary trained teachers on the ground that the said 15 teachers who possessed the qualification of B.Ed. but were not holding Primary Teaching Certificate, could not be treated as trained primary teachers.

5. The court allowed the petition by directing the respondents to pay the grant for the salary to graduate B.Ed. teachers in the petitioners' school from the date it was due to them with usual interest thereon by referring to the aforesaid decisions of this court as was payable to trained teachers. The court also expressed its anguish on the insensitiveness of the State authorities to the declaration of law by the High Court of the State. As a State governed by a Rule of law, the State authorities are as much bound by the interpretation of law declared by the courts. The court said in para 5:

"Before parting with, it is to be noticed that the controversy involved in the present case has been settled by the aforesaid decision of this court rendered on 12.12.1983. In spite of that the Government has taken the impugned decision on 21.5.1988 and their stand has been reiterated in the affidavit filed on 13.8.1988 by Mr. D.N. Mehta, the Under Secretary, Education Department. Thus it clearly is a matter of disobedience of the direction of this court. This sort of attitude of the public authorities is not only torturous to the people but also add to the already overburdened judiciary."

6. Yet in slightly different circumstances once again the issue arose before this court in ARUNABEN J. MIN VS. STATE reported in 1996(1) GLR 64. In the said

case the petitioner was appointed as an untrained primary teacher in 1973 when she had SSC qualification to her credit which was the requirement for recruitment then. Thereafter, while continuing in service the petitioner passed B.Ed. examination in 1978. Meanwhile under the Recruitment Rules of 1976 the required qualification for the trained teacher was prescribed as P.T.C. The Government had issued circulars on 12.2.1976 stating that persons with B.Ed. qualification should not be appointed as primary teacher. It also appears from the facts noticed by the court that the petitioner was appointed since 1973 from time to time for the sessions and her services were being terminated again and again and she was lastly appointed on 4.4.1979 and thereafter she was continued in service until her service were sought to be terminated by order dated 5.8.1981 by the District Education Officer on the aforesaid ground, against which the petitioner had in the first instance preferred a Civil Suit in which injunction against the termination of her service was granted. As a result of some orders made in the Civil Suit and the orders made by this court in S.C.A. 2610 of 1980 one Mrs. Indira P. Dasani, Director Primary Education disposed of the representation of the petitioner against the aforesaid order dated 5.8.1981. Thus the two orders were made subject matter of the aforesaid petition before this court. The court while allowing the petition and quashing the termination of the petitioner on the alleged reasons of not holding requisite qualification for primary trained teacher, observed that the qualification of B.Ed. in the year 1978 in any case can not be placed on lower pedestal than P.T.C. the appointment could not be denied to her on the ground that only holders of qualification of P.T.C. could be appointed as primary teachers and that whereas she has higher qualification of B.Ed. and after acquiring that higher qualification she could not be denied the benefit of her higher qualification. It may be noticed that even the competent authority before advertting to terminate by Resolution dated 15.2.1979 had adopted a Resolution in consonance with the contention raised in the petition.

7. Once again this controversy comes before this court in the case of the three petitioners in identical circumstances.

8. In view of the aforesaid decisions it cannot be doubted that since inception of Recruitment Rules 1976 when requirement of Primary Teachers Certificate was prescribed for appointment of trained primary teacher consistently this court has taken view that B.Ed. course

is higher course than P.T.C. , a B.Ed. trained person is qualified to train and teach the primary teaching certificate course and therefore it cannot be said that a person who possesses higher qualification to teach primary teachers for acquiring primary teachers certificate is not qualified to hold the post of primary teacher (trained) and to the higher scale of pay payable to a trained primary teacher. It is also well settled that a decision of the High Court which has not been challenged declaring the law prevailing in the State or for that matter the decision of the highest court of the State cannot be set at naught or be by-passed by the administrative Resolutions. The only methodology known to law by which effect of such judgements can be nullified is by legislative process removing the foundation on which the judgements are based. The tendency of the State Government shown in the matters of dealing with the cases of B.Ed. trained primary teachers since 1976 in spite of consistent view of this court which has never been challenged, defies any logic of a welfare State committed to the rule of law and insisting the citizens to repeatedly knock at the doors of the courts for getting relief which otherwise the State authorities are bound to deliver. It may be stated that in a given circumstances consistent defiance of law declared by the court may amount to wilful disobedience of the orders of the court resulting in abuse of power to deflect the course of justice requiring necessary follow up action. This is a note of caution.

9. In view of the decision referred to above, I have no hesitation in coming to the conclusion that the petitioners are entitled to relief prayed for to be placed in the time scale of pay in the grade to which the primary trained teachers are entitled to whether they are holders of P.T. certificate or holder of B.Ed. degree. All administrative decisions of the Government to the contrary, as referred in the decisions of this court, must give way to the law enunciated by this court which is binding on the State authorities as well and such administrative circulars or notification cannot be pressed into service for denying the legitimate entitlement of primary trained teachers in the appropriate pay scales applicable to them. The Resolution dated 1.1.1978 which has been made subject matter of challenge in this petition, by which those who acquired B.Ed. degree before 1.1.1977 were exempt from undertaking training from P.T.C. and those who acquired B.Ed. after 1.1.1977 were required to undertake P.T.C. training for claiming benefit of higher pay scale was not given effect to by declaring the cut off date as

artificial and arbitrary by decision of this court in SATISHCHANDRA BHAILALBHAI SHAH's case (*supra*) and Primary School's case. No fresh declaration therefore is required to be made.

As a result of the aforesaid discussion, this petition is allowed. The respondents are directed to treat the petitioners as trained primary teachers for all purposes obliterating the distinction between B.Ed. and P.T.C., when P.T.C. is required qualification and place them in appropriate higher pay scale applicable to them with effect from the date which is due to them. All consequential arrears shall be paid within a period of two months with interest at the rate of 15%. Rule is made absolute in terms as stated above. Respondents Nos. 1, 2 and 3 shall pay the cost to the petitioners which is quantified at Rs. 2000/-.

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